



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
ENVIRONMENTAL
INFORMATION

October 10, 2018

Laurence Brewer
Chief Records Officer, United States Government
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

Re: Response to July 10, 2018, letter, Ref. No. 2018-07-05_UD_EPA_UD-2018-0018

Dear Mr. Brewer:

This is the U.S. Environmental Protection Agency's (EPA's) response to your letter dated July 10, 2018, regarding allegations of unauthorized destruction of calendar records of former EPA Administrator Scott Pruitt, as reported in two media articles. Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency.

EPA takes compliance with the requirements of the Federal Records Act (FRA) very seriously and has reviewed the allegations contained in the articles referenced in your July 10, 2018, letter to determine whether any unauthorized disposition of federal records has occurred. Staff in EPA's Office of the Administrator, Office of Environmental Information, and Office of General Counsel reviewed the allegations of the unauthorized disposition of calendar records and conducted follow-up to ascertain whether any unlawful disposition of records had occurred.

After a careful investigation, EPA has no reason to believe that federal records have been unlawfully destroyed. Further, based on the Agency's review of the matter, the articles referenced in your July 10th letter mischaracterize EPA's documentation of former Administrator Pruitt's schedule during his time at the Agency.

In order to facilitate review of the allegations by the National Archives and Records Administration (NARA), this letter describes the types of calendar records maintained by EPA to document the activities of the former EPA Administrator. This letter also reports information obtained as the result of the Agency's research into the allegations contained in the articles referenced in your July 10th letter. Finally, the letter explains the steps EPA staff have taken to enhance the management of calendar records at EPA. The Agency looks forward to your response and is interested in obtaining any guidance or other insights you may have as to any additional best practices EPA may want to employ prospectively regarding calendar management.

Types of Calendar Records

The articles cited in your July 10th letter refer to both an “official calendar” and a “public calendar” in reference to former Administrator Pruitt. The use of these terms interchangeably to describe various kinds of records introduces one major source of confusion. At the outset, it is important to clarify that EPA maintained former Administrator Pruitt’s official calendar for meetings and appointments using the Microsoft Outlook calendar application. EPA used an Outlook account established specifically to maintain the former Administrator’s schedule. This account is the location where the accurate and most complete information regarding the Administrator’s schedule is stored. EPA uses the Outlook calendar records to respond to Freedom of Information Act (FOIA) requests for information about the former Administrator’s schedule, and for purposes of managing the permanent records of the Administrator’s calendar for eventual transfer to NARA. Accordingly, the Outlook calendar constituted the “official calendar” for purposes of documenting the activities of former Administrator Pruitt.

As with prior EPA Administrators, EPA also voluntarily posted a simplified schedule for former Administrator Pruitt on the EPA.gov website that is different from the Outlook calendar. At times, the cited media reports confusingly and incorrectly refer to the EPA.gov calendar as EPA’s “official calendar” or “official schedule,” which is incorrect, as noted above. EPA provides the EPA.gov calendar resource on the website as a simplified, easily accessible source of information for the public regarding key activities of the EPA Administrator.

Allegations Related to the Creation and Management of Records About Former Administrator Pruitt’s Schedule

EPA would like to provide additional information about the creation and management of these distinct types of records to further clarify questions raised by the allegations in the articles.

As with other past Administrators, the EPA.gov calendar provided on the Agency’s website contains a subset of information relating to official meetings and events that were determined to be of general interest. The EPA.gov calendar serves a different purpose than the Outlook calendar, which results in numerous intentional differences between the two types of records, which are confusingly reported as unauthorized dispositions in the articles.

As noted on EPA’s website, the EPA.gov calendar “displays meetings with staff, stakeholders, elected officials, and others outside the Agency.” To create the EPA.gov calendar, EPA staff copy the items listed on the official Outlook calendar into a new document and then edit the document to make the information suitable for posting on EPA.gov. Staff remove entries such as medical appointments appearing in the Outlook calendar from the document prepared for EPA.gov posting since such meetings are personal and not of public interest. Staff also edit the entries to simplify the information for display on the website. For example, staff may edit the title of an entry to identify the organization or entity that participated in the meeting, but not the names of the individuals from the organization who attended. Finally, staff meeting entries are typically included on EPA.gov, but the titles of the staff meetings are re-labeled as “Staff Meeting” in order to prevent against the inadvertent release of a privileged matter. After the document is prepared in this manner, the information is reviewed and transmitted to the office responsible for posting the schedule to EPA.gov. As a result of this process, the EPA.gov calendar necessarily differs from the information contained in the official Outlook calendar, as it is not the official calendar and is designed to include only a subset of information on the official calendar.

Therefore, differences between the Outlook calendar records and the EPA.gov calendar, such as those alleged in the article, frequently appear and result from the intended nature and use of each record type. Attached to this letter is an example that is typical of each type of record for May 11, 2017, illustrating the different nature of EPA.gov and Outlook records.

EPA disputes any allegations that suggest that meetings on the official calendar that actually occurred were later removed inappropriately. EPA has not identified any evidence to support such an allegation. Staff in EPA's Office of General Counsel did reach out to staff in NARA's Office of General Counsel in the Fall of 2017 to discuss best practices for maintaining the EPA Administrator's Outlook calendar for purposes of the FRA. Specifically, EPA discussed the challenges agencies face in balancing the need to manage an ever-changing, day-to-day schedule of an Agency head, with the obligation to accurately document the Administrator's actual activities for the purposes of the FRA. At that time, EPA shared with staff in NARA's Office of General Counsel that it had learned that prior to September 2017, scheduling staff had made changes to the Outlook calendar in an effort to make the Outlook calendar reflect meetings that actually occurred. For example, scheduling staff corrected inaccurate entries by adding meetings that occurred but were not originally reflected on the schedule, removing meetings that were on the schedule that did not occur, or that the former Administrator did not attend, and modifying some entries that occurred in a different way than the original entry implied. Based on the investigation, it is EPA's understanding that these modifications were made to ensure the accuracy and completeness of the calendar record. EPA staff, after consultation with NARA's Office of General Counsel, determined that such changes did not constitute an unauthorized destruction of federal records, as the changes were made to reflect the actual events in which the former Administrator participated. This conclusion is consistent with and based on the Agency's obligation to create and maintain "adequate and proper documentation" of the "persons, places, things or matters dealt with by the agency" pursuant to 36 C.F.R. § 1222.22. Thus, while changes to the calendar were made by scheduling staff as part of management of the former Administrator's schedule to ensure the accuracy of the calendar, EPA has identified no evidence that meetings that occurred with former Administrator Pruitt were removed from the official Outlook calendar, as the articles imply.

Regarding the allegation that EPA staff met regularly to make changes to the former Administrator's calendar, EPA staff met with numerous relevant Agency staff, and did not identify any information indicating such meetings took place. It is possible that the allegations confusingly refer to meetings about what to put on EPA.gov when the Agency began posting that information for former Administrator Pruitt. Since the EPA.gov calendar reflects a subset of meetings, and not the official record of all events, it was necessary and appropriate that staff met to discuss what should be posted on that EPA.gov calendar. Alternatively, the allegations may be confusingly referring to substantive meetings about scheduling the former Administrator's meetings and travel. Meetings to plan and manage the Administrator's schedule occurred, but it is the Agency's understanding that those meetings were typical of normal advance planning for an agency principal. Finally, because EPA was processing copies of the detailed Outlook calendar records for release under FOIA, it is possible that the allegations may be confusingly referring to meetings to discuss what exempt information appeared in the records that would be suitable for redaction under one of FOIA's exemptions.

Other Types of Scheduling Records

The cited reports also allege that EPA maintained "secret" calendars. EPA staff reviewed the allegations, met with numerous relevant Agency staff, and reviewed available information sources including a review of the former Administrator's mobile devices. EPA staff did not identify any information

indicating that any calendars other than the Outlook and EPA.gov calendars ever existed. Based on information provided by Agency staff, EPA has confirmed that there was no other paper or electronic calendar used to keep a schedule of EPA activities for former Administrator Scott Pruitt.

The reported allegations about a “secret” calendar may be referring to other scheduling records circulated among certain senior staff to provide input on his proposed meetings. Scheduling staff did generate other kinds of individual, or ad hoc, records in their work to support the Administrator’s activities and assist with planning for public speaking events, travel, and security, among other functions. For example, one such type of record, used for previous EPA Administrators, including former Administrator Pruitt, is referred to at EPA as a “line by line.” A “line by line” document is typically a snapshot of the former Administrator’s potential schedule sent around to senior officials by email either days or weeks in advance. These “line by lines” were intended to provide senior officials with a general awareness of potential upcoming travel, events, and meetings of the Administrator. These “line by line” documents were draft, one-time, static snapshots of the Administrator’s proposed schedule. Once distributed, they were not updated to reflect real-time changes in the Administrator’s actual calendar. It is both expected and necessary that EPA staff manage the schedule of the Agency Administrator using multiple types of agency records that meet different business needs.

Allegations of Specific Changes to the Calendar

The article referenced in your July 10, 2018, letter alleges that meetings with a Vatican official during a trip to Italy were removed from an EPA calendar. The Outlook calendar reflects that the Administrator traveled to Italy during the period at issue. The specific details regarding the activities of the former Administrator while on the trip are recorded in other Agency records such as emails and travel-related records. The allegation in the article appears to relate to information about the former Administrator’s trip to Italy that was not included on the EPA.gov calendar. As noted above, the EPA.gov calendar is not the official calendar for purposes of documenting the activities of former Administrator Pruitt. Numerous other records document the activities of the former Administrator and other EPA staff on the Italy trip, including the events referenced in the article. Other EPA records indicate that the schedule for that trip was being developed until, and possibly even during, the trip. Therefore, other permanent records documenting the official business conducted by the Administrator during the trip to Italy have been captured and will continue to be managed appropriately according to the applicable records schedule. Records such as final meeting agendas, travel vouchers and other trip-related documents are managed alongside the Outlook and EPA.gov calendar records and help document agency activities.

The referenced article also alleges that a former employee reported that a meeting held on October 18, 2017 at 10:30 a.m. that is listed on EPA.gov had a participant that was not an EPA employee. EPA staff who participated in that meeting have confirmed that attorneys from a law firm representing the Orange County Water District did attend the meeting. Because EPA uses an internal EPA.gov account to maintain the Administrator’s schedule, typically meeting invitations are not sent electronically to external participants to preserve the utility of the internal secondary account. External participants in Administrator meetings are typically reflected in the meeting entry itself, or in other documents such as email correspondence or briefing materials. As also referenced in the article, the external participants in this meeting are indicated in email correspondence between scheduling staff and the external participants themselves.

Based on the above and its thorough review of the matter, EPA has no reason to believe that federal records have been unlawfully destroyed.

Continuing Actions and Improvements

EPA has established on-going best practices regarding the creation and preservation of calendar records for EPA Administrators. Scheduling staff, like all Agency staff, are trained on the FRA requirements through annual required training. Historically, knowledgeable and experienced staff assisted scheduling staff with understanding the records requirements specific to calendars of senior officials. Scheduling staff therefore understood the importance of making contemporaneous updates to the Outlook calendar and implemented those practices. At the beginning of the current Administration, there was turnover in scheduling staff, some of whom were new to scheduling, which presented some challenges from a training and consistency perspective. Current scheduling staff are experienced and regularly confer with senior staff -- at a minimum on a daily basis -- to ensure the accuracy and completeness of the Outlook calendar. Staff will often update the Outlook calendar throughout the day as changes occur to ensure accuracy.

Following the discussions with NARA staff in the Fall of 2017 that are described above, EPA staff worked with the Administrator's scheduling staff to reinforce the established best practices for ensuring the contemporaneous management of calendar records for the Administrator. The best practices balance the need to manage the EPA Administrator's schedule in real time, with the need to ensure accurate documentation of the Administrator's activities for purposes of the FRA and FOIA. EPA continues to look to identify ways to best manage these important and dynamic records, and would welcome any input on best practices that have been identified by NARA and/or other agencies facing similar challenges.

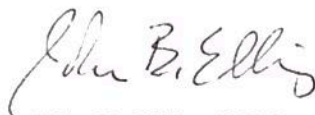
EPA scheduling staff have also established a practice of clearly marking Outlook entries for purely personal appointments with information identifying those entries as personal. EPA staff, including Acting Administrator Wheeler, determine whether a meeting is personal or work-related when scheduling the meeting, and will update that marking if the nature of an appointment changes after the event or meeting is completed. For instance, if an appointment with a personal acquaintance for lunch is marked personal, but official agency business is discussed during the lunch, then the Administrator or scheduling staff work to timely revise the Outlook entry to reflect that official business was discussed.

Finally, EPA continues to provide specific records training to senior officials, including Acting Administrator Wheeler, both on an annual basis and when the official joins the Agency. Acting Administrator Wheeler recently issued a memorandum to all employees regarding transparency. In that memo, Acting Administrator Wheeler directed not only that his schedule be made available on EPA.gov, but also that the schedules of other senior officials including the Deputy Administrator, Assistant Administrators, Associate Administrators, and Regional Administrators be made available as well. A copy of that memorandum is available at: <https://www.epa.gov/sites/production/files/2018-08/documents/wheeler-messageontransparency-august022018.pdf>.

Conclusion

Thank you for the opportunity to address the reported allegations. EPA values NARA's guidance on this important topic and can provide further information as requested.

Sincerely,

A handwritten signature in black ink, reading "John B. Ellis". The signature is written in a cursive style with a large, stylized "J" and "E".

John B. Ellis, CRM
EPA Records Officer

Enclosure